

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP, JUDGE

WAYMO, LLC,	)	
Plaintiff,	)	
	)	
VS.	)	No. C 17-00939 WHA
	)	
UBER TECHNOLOGIES, INC.,	)	
et al.,	)	
Defendants.	)	
<hr/>		San Francisco, California
		Wednesday, April 5, 2017

TRANSCRIPT OF PROCEEDINGS

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Official Reporter, U.S. District Court

(Appearances continued, next page)

**APPEARANCES, CONTINUED:**

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Wednesday, April 5, 2017

10:06 a.m.

P R O C E E D I N G S

**THE CLERK:** Calling Civil 17-939, that's Waymo LLC versus Uber Technologies Inc. et al. It is on for a discovery hearing.

Counsel, can you please state your appearances for the record.

**MR. PERLSON:** Your Honor, David Perlson from Quinn Emanuel on behalf of plaintiff Waymo. I'm here with my partner Jordan Jaffe (Indicating), and Jeff Nardinelli, and Lindsay Cooper.

Mr. Verhoeven wanted me to let you know he is disappointed he couldn't make it, but he's out of town and couldn't get back in time for the hearing.

**THE COURT:** All right.

And?

**MR. GONZALEZ:** Good morning, Your Honor. Arturo Gonzalez and Michelle Yang from Morrison & Foerster, along with our co-counsel.

**MS. DUNN:** Karen Dunn and Hamish Hume from Boies Schiller.

**THE COURT:** Good morning, welcome to you.

And?

**MR. RAMSEY:** Good morning, Your Honor. Ismail Ramsey from Ehrlich & Ramsey on behalf of Levandowski.

**THE COURT:** Thank you, Mr. Ramsey, welcome to you.

**MR. RAMSEY:** Thank you, Your Honor.

**THE COURT:** Is there anyone representing -- I've lost it

1 now -- Samir Kshirsagar or Radu Raduta?

2 **MR. GONZALEZ:** Your Honor, it is my understanding that both  
3 of them have retained separate counsel.

4 Radu is no longer employed by Uber. And therefore, we do  
5 not represent him in any capacity. We do represent Samir. He  
6 is currently an employee, and we do represent him, Your Honor,  
7 with respect to the case.

8 **THE COURT:** Did he turn over the document he downloaded?

9 **MR. GONZALEZ:** Your Honor, we did collect documents from  
10 him. And thus far, I believe we have only found one document  
11 from his computers that matches the documents that were  
12 identified in the complaint and the moving papers.

13 That one document, it's my understanding, was not on his  
14 Uber computer, but on private information that we were given  
15 access to.

16 **THE COURT:** I don't know if that's a complete answer or not,  
17 but they have proof on their side that he downloaded at least  
18 one document. They've identified what that document is, I  
19 think; right?

20 **MR. PERLSON:** (Nods head)

21 **THE COURT:** And you've got to produce it or have good reason  
22 not to. So what you have said so far is not a complete answer.  
23 So, I'm not blessing what you have just said, but I want you to  
24 know that I'm following what's happened on those two guys as  
25 well as the -- Mr. Levandowski.

1       **MR. GONZALEZ:** Understood, your Honor.

2       One bit of information is that we have learned that that  
3       information was downloaded to his work computer while he was at  
4       Google, just for your information. But we are searching --

5       **THE COURT:** You're saying that he did not take it with him  
6       when he left?

7       **MR. GONZALEZ:** It's my understanding, Your Honor, that he  
8       did not take all of the documents that have been raised in the  
9       complaint and the moving papers by Google. I do --

10      **THE COURT:** That's a different -- you are not answering my  
11      question. Did he take any documents?

12      **MR. GONZALEZ:** I do believe, Your Honor, that we found one  
13      hit. And that document will be produced.

14      **MR. PERLSON:** Your Honor, that hasn't been produced to date,  
15      as far as we understand.

16      **MR. GONZALEZ:** (Nods head)

17      **THE COURT:** All right. Let's hear your motion.

18      **MR. PERLSON:** Well, Your Honor, the Court gave its order,  
19      very clear order as to what was supposed to be produced by  
20      March 31st. It was agreed to by the parties. And thus far,  
21      there's been a -- they have not complied with the order in  
22      numerous respects. There has not been a -- a sufficient search  
23      done to date for many reasons.

24      For example, we made the 14,000 files available to  
25      defendants to come and inspect. They never came and inspected

1 any of them. So there was no way that they could use those  
2 files to actually do their search.

3 And obviously, they haven't -- for reasons that we have  
4 heard before, they haven't obtained anything from  
5 Mr. Levandowski, himself, personally. As we understand it, he  
6 was not even personally involved in the investigation as to  
7 complying with the Court's March 16th order. And it's -- we're  
8 not aware that Samir was involved in that, either.

9 Instead, what we understand was done was that there were  
10 some search terms that were used for -- in relation to e-mail,  
11 some documents on Google Drive, and on ten custodians, on their  
12 work -- work computer. There's -- and that's it. We don't know  
13 if there's other stuff out there that they didn't search.  
14 Defendants' counsel was unable to say.

15 There does not seem to have been any search that was done to  
16 look for documents that have pictures or schematics. Many of  
17 the files that the -- the 14,000 files that were downloaded by  
18 Mr. Levandowski have schematics and things of that nature, were  
19 not -- we don't understand there to have been any real search  
20 done in relation to finding where those documents may or may not  
21 have appeared. The -- because -- and they couldn't know,  
22 because Mr. Levandowski won't show them the documents that he  
23 has. And they never bothered to come and look to inspect the  
24 documents that we made available to them.

25 And then they -- also we -- let's see -- they were -- and in

1 the ten custodians that they searched, they were the three  
2 individuals who were named in the complaint. And then there  
3 were seven more individuals that they randomly selected.

4 But there's at least 40 former Waymo employees now at Uber.  
5 And presumably many other people who have done LiDAR. And they  
6 basically just took this very small search and just assumed that  
7 was enough.

8 Now, one of this things that we have heard in our  
9 meet-and-confer this morning is that they just weren't able to  
10 do the search for the 14,000 files because there were just too  
11 many of them.

12 Well, this was the relief that Your Honor ordered, was  
13 something that they agreed to. And not once before the -- the  
14 documents became due did they raise any concerns with us that  
15 they were unable to comply with the Court's order. They didn't  
16 say that it was too broad, that they couldn't do it. They  
17 certainly didn't seek relief from Your Honor. And it seems they  
18 have simply decided that it was just too hard, and that -- or  
19 that they didn't have an obligation to do it.

20 And Your Honor, that's not our understanding of how things  
21 work. If there was a problem, if there was an issue, that they  
22 should have raised that ahead of time. But it seems that as of  
23 to date, it's been woefully inadequate.

24 And it is not for our want of trying to, you know, get help  
25 in the process. We've repeatedly asked them for return of these

1 14,000 documents. They have basically ignored us. And, and  
2 apparently, a lot of this is due to the fact that, potentially,  
3 that Mr. Levandowski is not cooperating, will not provide the  
4 materials on some baseless Fifth-Amendment privilege ground.

5 But as Your Honor noted at the hearing last week, they --  
6 you know, there are things that they can do. They can fire  
7 Mr. Levandowski. Apparently they haven't done that. He still  
8 works there. They could have some sort of disciplinary  
9 measures. They haven't done that. We asked them today whether  
10 there were any disciplinary measures. They refused to answer.

11 And apparently they -- they asked him for the files, and he  
12 took the Fifth, and they didn't do anything else. And it seems  
13 to have clouded their entire investigation into this whole  
14 thing.

15 And I don't know how they could have possibly complied with  
16 Your Honor's order -- the fact they haven't gotten the 14,000  
17 files from Mr. Levandowski himself is bad enough, but it doesn't  
18 seem like he was involved even in looking for these files within  
19 Uber. He's the head of their -- the division that is running  
20 their self-driving program this all relates to. How could they  
21 possibly comply with the Court's order without having him deeply  
22 involved in this? And we've heard no sufficient explanation as  
23 to that.

24 And Your Honor ordered defendants to produce, you know,  
25 various pieces of information in relation to the hearing today.



1 We asked that as part of our meet-and-confer. They refused to  
2 give that to us. So we don't know the specifics of that  
3 information.

4 We still haven't seen the privilege log; we haven't seen the  
5 list of the servers; we haven't seen the list of the people who  
6 were involved.

7 So, you know, we are at a -- a disadvantage of even being  
8 able to articulate the very specifics of their failures. But it  
9 seems quite clear that there has been a -- a willful failure to  
10 comply with Your Honor's order. And, we would submit, justifies  
11 the adverse inference that we requested in our letter brief.

12 **THE COURT:** Mr. Gonzalez.

13 **MR. GONZALEZ:** So Your Honor, if I can respond briefly. I  
14 believe that we will demonstrate to you that those 14,000 files  
15 never made it to Uber.

16 Now, I want to start by telling you what we've done.  
17 Because you just heard that we didn't do this and we didn't do  
18 that. Let me tell you what we've done to comply with your  
19 order.

20 First, we interviewed 85 people that currently work for  
21 Uber, who used to work at Google. Of those people, 42 used to  
22 work in their automotive division.

23 Given that we only had a limited amount of time, I wanted to  
24 take 25 percent of that 42, essentially ten, and look at all of  
25 their computers. So we took the three people who are named in

1 their papers and we selected seven others randomly. And we had  
2 a consultant come in and look at all of their computer  
3 information at Uber to see if we could find any of these 41,000  
4 (sic) files.

5 In addition to that, we looked at the cell phone that Samir  
6 has. He let us look at his cell phone, and so we did look at  
7 that. We also looked at the entire GIT (Phonetic) repository.  
8 That is a repository for Uber's engineers. And we looked at  
9 that to see if we could find any hits. We looked for the file  
10 names or for hash values. And in addition to that, working with  
11 our consultants and with our clients, we came up with 120  
12 additional search terms that we could search to see if we can  
13 find any evidence of these files.

14 In total, Your Honor -- this is important for you to know --  
15 we searched 12 terabytes of data, in just the two weeks or so  
16 that we have had. That's the equivalent of 8.3 billion pages of  
17 text. So, any suggestion that we are not looking is extremely  
18 unfair.

19 And what did we find? We found 3,100 hits. But you know  
20 what they are? They're not substantive. You are going to see  
21 this in the declaration that we will file on Friday with our  
22 opposition, Your Honor. That will detail it a lot better than I  
23 can right now.

24 But we're not getting substantive hits. You know why?  
25 Because these 14,000 files, they're not trade secrets. Most of

1 this stuff isn't trade secret at all. So we're getting hits of  
2 things --

3 **THE COURT:** Why did he take it, then?

4 **MR. GONZALEZ:** Your Honor --

5 **THE COURT:** The record -- the record that we have and that  
6 you are faced with is that shortly before Mr. Levandowski left  
7 the company, he downloaded 14,000 files, then he wiped clean the  
8 computer, and he took it with him. That's the record.

9 If all you can show is that you can't find them in your  
10 files, there's going to be a preliminary injunction of some  
11 sort. It can't be helped. You have got to do more than what  
12 you are telling me.

13 Your guy should return -- he's not denying it, you're not  
14 denying it, no one on your side is denying that he has the  
15 14,000 files. Maybe you will, maybe you will. But so far, you  
16 haven't denied it. And if it's going to be denied, then how can  
17 you take the Fifth Amendment? Or how can he take the Fifth  
18 Amendment?

19 This is an extraordinary case. I have never seen a record  
20 this strong in 42 years. So you are up against it.

21 **MR. GONZALEZ:** (Nods head)

22 **THE COURT:** And you are looking at a preliminary injunction,  
23 even if what you tell me is true.

24 Now, what the scope of the injunction is, I don't know.  
25 That's a -- calls for some careful judgment. But this -- you

1 just can't escape this by saying: We have been working hard, we  
2 can't find any hits.

3 And you are dodging the main issue, which is: The record  
4 very clearly shows, so far, that he has 14,000 files.

5 **MR. GONZALEZ:** Let me just --

6 **THE COURT:** And whether they are trade secrets or not, they  
7 came from -- they came from them. So, I can't just take your  
8 word for it that they're not trade secrets. They're -- why  
9 would he take them if they didn't have some valuable information  
10 in there? The inferences work against you here.

11 So, I am very anxious to see what you are going to -- I'm  
12 going to read it with great interest, to see what you can come  
13 up with. But you are up against a strong record that they have  
14 made.

15 Now, maybe you have blown this guy out of the water, the guy  
16 who did the computer analysis, and it's a fraud. That would be  
17 amazing. But it could happen. I haven't seen what you have  
18 done on his deposition yet.

19 Did you take his deposition? Maybe -- maybe you didn't take  
20 it. But on the face of it, it's a powerful showing that the  
21 plaintiff has made here.

22 So what you are telling me is not going to be a  
23 get-out-of-jail-free card.

24 **MR. GONZALEZ:** Your Honor, may I add something here that is  
25 very important for you to know?

1       **THE COURT:** Sure.

2       **MR. GONZALEZ:** This really is important, because you are  
3 making an assumption that these are 14,000 really important  
4 files. I think you are making that assumption because you are  
5 saying: Why would he have taken them if they are not important?  
6 Right?

7       **THE COURT:** Yeah.

8       **MR. GONZALEZ:** Here's --

9       **THE COURT:** Or, or important enough to take.

10      **MR. GONZALEZ:** All right. So --

11      **THE COURT:** Even if it's just proprietary information.  
12 Doesn't have to qualify as trade secrets. You take 14,000  
13 files, you wipe the computer clean, and then you leave the  
14 company. Doesn't that sound suspicious to you?

15      **MR. GONZALEZ:** All right, Your Honor. Here's a question  
16 that I have.

17      The one thing that you may or may not have asked yourself  
18 yet, if you look at their complaint (Indicating), and if you  
19 look at their motion for preliminary injunction, and if you even  
20 look at the declaration of the guy who says he discovered the  
21 14,000 files had been downloaded -- I believe his name's  
22 Brown -- you know what's missing?

23      **THE COURT:** What?

24      **MR. GONZALEZ:** When did they discover that?

25      **THE COURT:** I thought that they said in December. I think

1 that's what their -- their declaration says that after they got  
2 the thing from the supplier that seemed to be suspiciously  
3 similar to their own design, they started doing an  
4 investigation. Seemed to me that they said that happened in  
5 December.

6 **MR. GONZALEZ:** What I would say is two things. Number one,  
7 if you find out in December that somebody took 14,000 important  
8 files, why do you wait until February 20th to file the  
9 complaint?

10 But it's better than that. They didn't find out in  
11 December, Your Honor. They found out in October. They found  
12 out in October that these files were allegedly taken, and yet  
13 they sat on their hands for four months, and did nothing. And  
14 then when they filed the complaint, they waited two weeks to  
15 serve it. And then they waited another week to file the  
16 injunction.

17 I just think you need to get --

18 **THE COURT:** Is all of this going to be laid out very  
19 clearly, under oath, with admissible evidence?

20 **MR. GONZALEZ:** Absolutely.

21 **THE COURT:** What is your proof that they knew this in  
22 October?

23 **MR. GONZALEZ:** Your Honor, I took the deposition of the guy  
24 who found the stuff, and I asked him that question. Because it  
25 seemed like a very interesting omission to me. Why is it

1 they're not telling Judge Alsup when they found this stuff?

2 He said: I found 14,000 files were downloaded. But he  
3 doesn't say when. They don't say when, anywhere, so I asked  
4 them that.

5 **THE COURT:** I thought the declaration said December.

6 **MR. GONZALEZ:** Your Honor, the declaration says that in  
7 December they inadvertently received an email from somebody that  
8 alerted them to the fact that something was going wrong.

9 What they don't tell you is that in October, they learned  
10 that these 14,000 files were downloaded, and they didn't say  
11 "Boo" for five months.

12 **THE COURT:** Any --

13 **MR. PERLSON:** Your Honor, can I respond to this?

14 **THE COURT:** Is that true?

15 **MR. PERLSON:** Well, first of all, what the -- the, in  
16 December is when we received the email.

17 **THE COURT:** Yeah.

18 **MR. PERLSON:** And there was knowledge of the documents being  
19 downloaded earlier than that. I don't know of the exact date.  
20 It could have been as early as October. And -- but that has  
21 nothing to do with the fact that they violated this Court order.  
22 We're happy to go into that.

23 I mean, the reason -- there's one thing of taking the  
24 documents. And then there's another thing of having evidence of  
25 their use. The gorilla email was the evidence of their -- the

1 first evidence we had that they were actually being used. Then  
2 we had further evidence when there was a Freedom of Information  
3 Act request from Nevada that showed their plans that they were  
4 going to imminently release some new product.

5 So that's when we had it all lined up that there was use,  
6 irreparable harm, and that's when we brought it.

7 But Your Honor, none of this has anything to do with our  
8 current motion regarding an order that they agreed to.

9 And Your Honor, for him to say up -- to get up here and say  
10 that these 14,000 files are not trade secrets, no one at his  
11 firm has ever looked at these files. We made them available  
12 weeks ago. So for him to get up here and say that they're junk,  
13 that they're nothing, they don't know. And they haven't looked  
14 to see whether they were deleted.

15 We found out this -- one of the things, Your Honor, is  
16 that -- you ordered is that the -- is that the -- excuse me --  
17 is that they provide evidence about the deletion of these files.  
18 We asked them about this this morning. They said it was just  
19 too hard. Their forensic adviser said it was just too hard. So  
20 they didn't even do anything in relation to that.

21 Plus, the knowledge -- and if we are talking about knowledge  
22 about these things that have been going on for some time, it was  
23 counsel at Morrison & Foerster, Mr. Tate, who has appeared in  
24 this case, who signed the common interest agreement that is  
25 intending to hide the due diligence report that Mr. Levandowski



1 is trying -- is trying to prevent from this Court and us from  
2 hearing.

3 **THE COURT:** Well, we are going to argue that tomorrow.

4 **MR. PERLSON:** Right. But I just want to say that the  
5 knowledge and the involvement and the possession of these  
6 documents and materials regarding this case and the taking of  
7 these files we think has been long known to defendants' counsel  
8 here, but yet we haven't -- nothing has been produced to us in  
9 relation to the acquisition of Otto by Uber or the due diligence  
10 report or anything relating to that.

11 **THE COURT:** All right, look. I -- I want to give you a -- I  
12 want to give you a tentative view, and then let you try to argue  
13 with me.

14 But Mr. Gonzalez, you get -- you haven't even given me a  
15 brief on this. So, you get to -- I am going to give you another  
16 opportunity to just stick with the problem that you have not  
17 complied, allegedly, with the order that you agreed to, to  
18 produce this material by March 31.

19 **MR. GONZALEZ:** So, Your Honor, a couple of things.

20 First of all, I very much wanted to file a written response.  
21 But your standing order says that when somebody files a letter  
22 brief, you will let us know if you want a response or if you  
23 want to us to show up for a hearing. So I would very much like  
24 to file a written response, if you will give me leave to do  
25 that.

1 But here's what I want to say.

2 **THE COURT:** You know, that's funny, because that's not been  
3 the practice. I'll have to go back and look at what the order  
4 says.

5 But in every case, the front side comes in, I set a hearing  
6 date, and then your side always submits an opposition. I've  
7 never had anyone say: Judge -- That's the first I'm ever heard  
8 that argument. I'll go back and look and see if the order says  
9 that.

10 **MR. GONZALEZ:** Yeah, look at the order, Your Honor. The  
11 order says that you'll let us know if you want a response.

12 And because you didn't, we were concerned -- we don't want  
13 to file something and have Judge Alsup get upset that we filed  
14 something when he didn't ask us to. But we very much wanted to,  
15 and frankly, had drafted a letter.

16 **THE COURT:** Then you have until 5:00 today to submit your  
17 letter.

18 **MR. GONZALEZ:** Fine. I'll do that, Your Honor. And that  
19 letter will have the authorities -- the authorities are, on this  
20 point -- I'll just make it briefly.

21 **THE COURT:** All right, go ahead.

22 **MR. GONZALEZ:** Briefly, Your Honor.

23 We can't produce something that we do not have. They --

24 **THE COURT:** You haven't searched well enough for it.

25 **MR. GONZALEZ:** Well, no, Your Honor. They have --

1       **THE COURT:** Have you searched every server?

2       **MR. GONZALEZ:** Every server, no, Your Honor, because that  
3 will take us weeks.

4       **THE COURT:** I want you to search every server. So you  
5 haven't done -- I don't know where all this stuff could be. I  
6 think you ought to -- first I want to see -- I ordered you to  
7 bring a list of servers.

8       You got that with you?

9       **MR. GONZALEZ:** I have that.

10       **THE COURT:** All right. Hand it to counsel, and give it to  
11 me, too.

12       **MR. GONZALEZ:** Your Honor, this --

13       **THE COURT:** I want all those things right now that I asked  
14 you, including the privilege log. Where is that?

15       **MR. GONZALEZ:** So Your Honor, I have the list that includes  
16 all of our suppliers, which you asked us to bring. I have that  
17 (Indicating). And at your direction, I will hand it to opposing  
18 counsel.

19       I would note that they are taking the position that this is  
20 all trade secret information.

21       **THE COURT:** What do you want me to do about this trade  
22 secret information? Do you want it under seal, attorneys' eyes  
23 only? For the time being, I'm willing to do that.

24       **MR. GONZALEZ:** Yeah, Your Honor --

25       **THE COURT:** All right. For the time, what you are handing

1 up to me will be attorneys' eyes only.

2 (Document handed up to the Court)

3 (Document tendered)

4 **THE COURT:** Be sure counsel gets it.

5 **MR. PERLSON:** I have a copy of it, Your Honor (Indicating).

6 **MR. GONZALEZ:** Your Honor, may I mention one thing while you  
7 are looking at that?

8 **THE COURT:** Yeah.

9 **MR. GONZALEZ:** That we accomplished in the meet-and-confer?

10 **THE COURT:** What?

11 **MR. GONZALEZ:** I told them on Monday after they sent you  
12 that letter where they wanted to pick 15 search terms, that same  
13 day we said: Give us the 15 search terms, and we will use them.  
14 We didn't hear a response until this morning. Now they've given  
15 us the list; we're using those terms. That's number one.

16 Number two, we are in the process of reviewing the computer  
17 data for five additional individuals that are working in the  
18 autonomous area that used to work at Google. And I have told  
19 them, I have told them, Your Honor: If there's any other person  
20 who you think might have taken something, let me know and we'll  
21 search them as well.

22 So it's not as though we're not continuing to try. We're  
23 digging and we're digging. But what I'm telling you,  
24 Your Honor, is I firmly believe that the reason we're not  
25 finding this information is because it never made it to Uber.

1       The only thing the record shows thus far is that 14,000  
2       files may or may not have been taken by someone. I'm not going  
3       to take a position on that. My view is they have to show that  
4       we are using them. Because they didn't sue Mr. Levandowski,  
5       Your Honor, he's not a defendant --

6       **THE COURT:** No, no, no, they have made a showing that your  
7       chief person has 14,000 of their files.

8       **MR. GONZALEZ:** That he had at one point --

9       **THE COURT:** That could lead to a preliminary injunction that  
10      Mr. Levandowski cannot work on this project anymore, until this  
11      case is over. That's what you're looking at. And these other  
12      two guys, too, maybe.

13      But that's the relief that this record -- I'm not saying  
14      that I'm going to grant it; it's is a matter of a lot of  
15      equities have to come into play. But the fact that they didn't  
16      sue Levandowski, they did sue you. And you keep on your payroll  
17      somebody who has 14,000 of their documents, and is liable to use  
18      them.

19      So that's the possible relief that could come out of this in  
20      a few weeks.

21      **MR. PERLSON:** Your Honor, could I just briefly respond to  
22      what Mr. Gonzalez said?

23      **THE COURT:** All right.

24      **MR. PERLSON:** Okay. Well, first of all, in terms of them,  
25      you know, requesting search terms, we reached out to them on

1 Saturday; they ignored us; we reached out to them on Sunday;  
2 they ignored us.

3 We were supposed to meet and confer on Monday. Mr. Gonzalez  
4 walked out of the room and would not talk to us, saying that  
5 they would send us a letter, which came seconds before we filed  
6 our motion.

7 We've provided the 15 search terms. We're happy to have  
8 them do it. These are all discussions and things that should  
9 have been accomplished beforehand, if they thought they could  
10 not do it.

11 On the record, it's very clear that they have not complied  
12 with the Court order, that they have no legitimate reason not to  
13 do it, and they never asked for any relief from the Court's  
14 order. And so --

15 **THE COURT:** Look. They have been working. I believe them  
16 when they say they have been working hard.

17 All right, maybe they didn't -- they should have made all  
18 those -- but I think the question is: What is the way forward  
19 for progress to be made?

20 And I'm not prepared to say there's going to be an adverse  
21 inference yet on account of this problem. But there may be.

22 Here's what I think we ought to do. I think you ought to go  
23 back and search all servers. You ought to do all 15 of those  
24 search terms. And you ought to search anybody that has anything  
25 to do with LiDAR.

1           Now, is that too hard? For a case this big, where maybe  
2           your company is going to get a preliminary injunction? Is that  
3           too hard to do that?

4           **MR. GONZALEZ:** Your Honor, we will search those 15 terms,  
5           Your Honor. And what I don't know --

6           **THE COURT:** No, no, no. All servers, 15 terms, anybody that  
7           has anything to do with LiDAR.

8           **MR. GONZALEZ:** I'm understanding you.

9           What I don't know, Your Honor, and I'll certainly find out  
10          very soon, is how long would it take to do that on all these  
11          servers. It is an enormous amount of data.

12          But I hear you, Your Honor. I want to use their terms. And  
13          I haven't even had a chance to talk to the client --

14          **THE COURT:** Let's do it in two steps. First is, go back and  
15          use the 15 terms on the servers, and the employees that you  
16          already have done.

17          **MR. GONZALEZ:** Correct.

18          **THE COURT:** So that will be step one.

19          **MR. GONZALEZ:** Yep.

20          **THE COURT:** All right. Step two is going to be to let your  
21          side pick out an additional ten employees. Let them pick the  
22          employees.

23          **MR. GONZALEZ:** Fair enough.

24          **THE COURT:** And then you search them. On whatever servers  
25          that they -- those ten have got records on, using the 15 search

1 terms.

2 **MR. GONZALEZ:** We can do that, your Honor. That will be --

3 **THE COURT:** All right. And then after all of that is done,  
4 you come back and pick up the rest with all the other servers,  
5 and all the other employees that have anything to do with LiDAR.

6 But I think, that way, we can prioritize and have a better  
7 chance of getting to -- now, I recognize that this is a large  
8 undertaking, and I have some sympathy for the fact that you  
9 can't do everything at once, and this was an ambitious project.  
10 So I -- all right.

11 Where is the fully-completed privilege log?

12 **MR. GONZALEZ:** So, Your Honor --

13 **MR. PERLSON:** Your Honor, can I just -- a quick  
14 clarification on a couple of things.

15 First of all, we provided 15 additional terms to the terms  
16 that they had already done. So to the extent that they are  
17 going to be doing additional custodians. I think that they  
18 should be using the terms that they had already done, and the 15  
19 terms, because --

20 **THE COURT:** All right. Can you do that?

21 **MR. GONZALEZ:** So here's the only issue. I'll do whatever  
22 you direct. We picked 120 terms. They're telling us: These  
23 are the 15 that are magic.

24 I can do 135 terms, but it's just going to take longer. So  
25 it's up to them. If I have to run 135 terms --



1       **THE COURT:** All right, here. Do this. Can you do it in  
2 stages?

3       **MR. GONZALEZ:** Yes.

4       **THE COURT:** Can you do their 15 first, and then go back and  
5 do the other 120.

6       **MR. GONZALEZ:** So Your Honor, to be clear, I will do the 15  
7 terms they just gave me on the employees we've already done.  
8 Then I'll do the 15 terms on ten other employees that they will  
9 give me. Then I'll go back to this ten other employees and do  
10 the additional 120 terms. So that all 20 people --

11       **THE COURT:** All right. And then you've got to do all the  
12 other servers, and eventually get around to everybody. But that  
13 is -- that sounds right to me.

14       **MR. GONZALEZ:** I understand, and we will do that.

15       Your Honor, you asked about a log. And as you know, there  
16 is an objection to the log. I have it. I want to stop there.  
17 I have it. There's an objection to the log. And that's what  
18 you are going to be hearing about tomorrow.

19       **THE COURT:** With respect to the one item that is in dispute,  
20 that due diligence report, you can leave that off for now.  
21 Because we're going to address this tomorrow. But that doesn't  
22 give us an excuse to not turn over a privilege log for  
23 everything else.

24       **MR. GONZALEZ:** So, Your Honor, I believe that the motion  
25 addresses more than just the document, itself. For example, if

1     there were attachments to the document, I believe the motion  
2     addresses that.

3             I will tell you, we've prepared a log that deals with that  
4     issue. But I think you're going to have that argued tomorrow.  
5     If you like, I could present it to Your Honor, under seal, just  
6     give it to you, because you're going to have a hearing on it  
7     tomorrow.

8             **THE COURT:** No, I don't want to take it under seal yet.

9             **MR. GONZALEZ:** But that's the issue.

10            **THE COURT:** Well, can you turn over a privilege log that is  
11     complete except for the things that are still in play in that  
12     motion tomorrow?

13            **MR. GONZALEZ:** So, because your ruling on that motion is  
14     going to determine what we can and cannot put into this log, let  
15     me tell you what else we are doing, so you can understand and  
16     appreciate how we are working very hard on this.

17            I have a separate log that doesn't -- that is not that  
18     document that you are going to have a hearing about tomorrow.  
19     That separate log that we started to work on is more than 200  
20     pages long. And it's basically the due diligence work that was  
21     done at the time of the acquisition. It's already 200 pages,  
22     and we're about halfway through.

23            But what I'm allowed to turn over is going to depend on your  
24     ruling tomorrow. So that log will be done this week. But what  
25     we are allowed to give them is going to depend on your ruling.

1 So I don't want to make a mistake here.

2 **THE COURT:** All right, all right. I will postpone the  
3 privilege log until we hear -- have our argument tomorrow.

4 **MR. PERLSON:** Your Honor, I had the understanding of the  
5 motion for tomorrow as you did, that it concerned simply the  
6 identity of the -- of a name on the privilege log.

7 **THE COURT:** That is what I thought, too, but now I'm hearing  
8 that it's more than just the due diligence report.

9 **MR. GONZALEZ:** It's that the name is --

10 **THE COURT:** Can I just -- you know, I -- maybe I -- maybe I  
11 should get back on the turnip truck. But I must tell you, when  
12 I was practicing, there was a purpose for a privilege log. It  
13 has to be detailed enough that you can see that the privilege  
14 actually does apply, and has not been waived. And sufficient  
15 information that the person trying to challenge it can challenge  
16 it.

17 I'll give you an example. Let's say that some -- not this  
18 case at all. Let's say somebody invokes the attorney/client  
19 privilege over some document. And they say -- a document goes  
20 from A to Attorney B on such and such a date, and it says  
21 regarding -- seeking legal advice regarding statute of  
22 limitations. So on its face, it look like it applies.

23 But what if, in fact, they gave that same document to ten  
24 other of their friends for fun reading? A total waiver.

25 That must be -- every recipient of the document must be

1 identified. And if a single one of them is not qualified --  
2 let's say it's somebody who is a lawyer but not yet admitted to  
3 practice law. Cases say: Waiver.

4 So, bone-crushing detail.

5 **MR. GONZALEZ:** Understood.

6 **THE COURT:** One of these little -- one of these fast glides  
7 over thin ice is not going to work.

8 **MR. GONZALEZ:** Understood.

9 **THE COURT:** It's got to be complete and accurate.

10 **MR. GONZALEZ:** We read your order, Your Honor.

11 **THE COURT:** All right.

12 **MR. GONZALEZ:** We appreciate that. Thank you.

13 **THE COURT:** Now, so -- and you have got to be ready to do  
14 this if you lose this motion.

15 **MR. GONZALEZ:** It's not my motion.

16 **THE COURT:** Well, if Mr. Izzy Ramsey loses his motion, you  
17 have got to be ready to turn it over, pronto.

18 **MR. GONZALEZ:** Understood, Your Honor.

19 **THE COURT:** Now, I told you to be ready today to explain  
20 why -- he has a good story to tell, but you are supposedly  
21 unable to talk to him. We are going to save that for tomorrow  
22 because that's more related until tomorrow.

23 Do you have on your side the top 50 of the most important  
24 files and documents from among the 14,000?

25 **MR. PERLSON:** We do.

1       **THE COURT:** All right. Let's -- let's discuss for a moment,  
2       is there a way -- the reason I asked for that, it may be a way  
3       for us to prioritize the searches. So instead of looking for  
4       some minuscule thing that doesn't have much to do with the case,  
5       we are focusing on things that matter the most to your side.

6       So is there a way to do that? In other words, you identify  
7       the top 50, give that to Mr. Gonzalez, and then his team goes  
8       back there and they do a better search for those 50 than they  
9       would for the entire 14,000.

10      **MR. PERLSON:** Your Honor, we are happy to provide them that,  
11      and have them do that. I will note that our trade-secret list  
12      identified several files that they could have already done, and  
13      should have done that, but we can do that now and provide it to  
14      them.

15      **MR. GONZALEZ:** In fact, I forgot to mention that. Thank  
16      Your Honor for remembering. That's exactly what our consultants  
17      recommended. They said: Look, we're looking for 14,000 files  
18      and stuff, and most of this is not even important. Tell them to  
19      give us their best stuff, and that way we can cover ground much  
20      faster.

21      **THE COURT:** Okay, I'm going to say that -- I'm not even  
22      going to hold them to the fact that No. 51 or 52 won't be a  
23      trade secret. Don't come back later and say: Oh, that's not a  
24      trade -- that wasn't on the list.

25      But as a way to prioritize discovery, I think if we take at

1 least the top 50, then that would be a way to help do a better  
2 job.

3 So can you turn that over to them? And it'll be under  
4 attorneys' eyes only because it may have secrets.

5 **MR. GONZALEZ:** We will prioritize that, Your Honor. Thank  
6 you. That's very helpful.

7 **THE COURT:** All right. Are there witnesses at the  
8 company -- at their company that you could take depositions of  
9 to try to see how thorough the search has been?

10 **MR. PERLSON:** I don't know. I don't know who at the company  
11 has been involved.

12 **THE COURT:** Well, you are probably going to learn in a  
13 couple of days when we see this submission, right?

14 **MR. GONZALEZ:** That's exactly right, Your Honor.

15 **THE COURT:** So maybe the thing to do is you wait -- you get  
16 to take some of those depositions anyway. So you remember under  
17 the March 13th order, when they make their submission, you get  
18 to take a number of depositions. So you could --

19 **MR. JAFFE:** Agreed.

20 **THE COURT:** -- use those to show that they have done a  
21 crappy job, arguably, on their document search.

22 **MR. PERLSON:** Okay. Depending on what we see, I don't know  
23 whether their declarants will be the right people to ask for  
24 that or not, but --

25 **THE COURT:** You've got three other depositions anyway.

1       **MR. PERLSON:** Yeah, maybe a custodian -- a 30(b)(6) on the  
2 search may be appropriate.

3       **THE COURT:** Well, you got to be careful on those 30(b)(6)s  
4 because I -- read my -- I know I have got rules on that. I  
5 don't like the way big firms use 30(b)(6). So you got to do it  
6 my way, but okay, I won't rule 30(b)(6) out.

7       **MR. PERLSON:** Okay.

8       **MR. GONZALEZ:** But as you say in your order, they may count  
9 for multiple depositions.

10       **THE COURT:** Maybe, may be.

11       How about this? When I was a lawyer, people still had  
12 manual files. I believe that your people still have manual  
13 files, even though computers are the way people go these days.  
14 Have you looked for manual files?

15       **MR. GONZALEZ:** So, Your Honor, the answer is yes. And you  
16 would be quite surprised. Today's generation, they don't keep a  
17 lot of paper.

18       **THE COURT:** Well --

19       **MR. GONZALEZ:** I still do binders (Indicating).

20       **THE COURT:** Not keeping a lot of paper is not the same thing  
21 as keeping no paper.

22       **MR. GONZALEZ:** Understood, Your Honor. And yes, when we  
23 interviewed the 85 Uber employees, we are obviously asking that  
24 question, and are finding that the Me Generation does not  
25 maintain very much paper at all.

1       **THE COURT:** Well, the ones that they do keep, you ought to  
2 look at them and see if they're any of these key documents.

3       **MR. GONZALEZ:** Exactly. And we are doing that, Your Honor.

4       **MR. PERLSON:** And Your Honor, I think that there could be  
5 potentially physical documents at defendants' counsel of  
6 Morrison & Foerster, because they were involved, apparently, in  
7 the due diligence that we're somehow now trying to --

8       **THE COURT:** All right. Let's say -- you're going to put  
9 those on the privilege log or -- right?

10       **MR. GONZALEZ:** That is part of the 200-page log that's in  
11 process.

12       **THE COURT:** All right. We need to have a plan in place.  
13 And maybe you've already got one.

14       The plaintiff has, I believe, made a sufficient showing that  
15 they ought to be able to inspect your LiDAR system, to see if  
16 the way it's actually implemented, they can -- they believe it  
17 violates any of their proprietary information. So, an  
18 inspection ought to be done.

19       So, what are we doing on that front?

20       **MR. PERLSON:** Well, Your Honor, that was part of the relief  
21 we asked in our letter. I think that next week would be an  
22 appropriate time to do it after we get their -- I mean, we could  
23 do it before, but I wouldn't want to have my only chance be  
24 before we get their opposition.

25       So I would think that some time early next week would be an



1     opportune time to do the inspection.

2           **THE COURT:** Do you personally know this technology well  
3 enough to go in there and look at it, yourself, without the  
4 benefit of an expert?

5           **MR. PERLSON:** First of all, I don't think going in by  
6 myself, me, personally, would be -- if we were to have one  
7 person to do it, it probably wouldn't be me. But I would think  
8 we do need our expert who is disclosed under the protective  
9 order, and I think it would be appropriate to do that.

10          **THE COURT:** So you and your expert go look at their LiDAR  
11 system. How, the physical layout, the software.

12           Why shouldn't they be allowed do that?

13           (Off-the-Record discussion between counsel)

14          **MR. PERLSON:** I'm bringing up Mr. Jaffe, who knows a little  
15 bit more about the technology than I do.

16          **MR. GONZALEZ:** So, Your Honor, a couple of things. I'm  
17 trying to balance two things.

18           Number one, we have nothing to hide. Number two, this is  
19 arguably the most sensitive trade secret we have.

20           And I'm wondering if the Court has considered this: What if  
21 you get a neutral expert to come look at our machine?

22          **THE COURT:** Well, I thought about that, but I have also  
23 thought about it being a delay gimmick.

24          **MR. GONZALEZ:** Oh, no, we're not seeking any delay,  
25 Your Honor --

1       **THE COURT:** Well, then, how about by 5:00 tomorrow, you two  
2 agree on who that expert could be. I have a feeling you would  
3 never agree because you have an incentive to delay, and -- so I  
4 don't know.

5       I -- can you -- I sent out an order yesterday saying: Hurry  
6 up and agree on a special master. This is one of the scenarios  
7 that I had in mind.

8       **MR. PERLSON:** Your Honor, Your Honor, having a special  
9 master review something perhaps independently could be  
10 something -- assuming we could work someone out. We have  
11 already started figuring out who that could be, and looking into  
12 that. We haven't run that to ground, since it was just  
13 recently.

14       But if they're going to come back and say that they are not  
15 using our trade secrets, they are not infringing our patents,  
16 presumably that will be done in reference to some device that is  
17 there, that is in place. In order to respond to that, we are  
18 going to necessarily need to see the device that these people  
19 are referring to.

20       **THE COURT:** It seems like that is right because, look, when  
21 we go to trial -- even you, yourself, want to keep the patent  
22 part in -- so they're going to get to see the -- at least some  
23 of your LiDAR system, no matter what. Because they have to be  
24 able to present a case at trial.

25       **MR. GONZALEZ:** Exactly. But it's the part that pertains to

1 the patents. These are very weak patents that I don't think are  
2 going to survive a summary judgment. But if they do,  
3 Your Honor, I'm agreeing with you that the little piece of the  
4 case that involves the patent, fine. But they want to come over  
5 and look at our whole machine. This is like somebody coming  
6 over and looking at the Pepsi formula.

7 And to have their paid expert do that? I'm saying we have  
8 nothing to hide, Your Honor. If you want to appoint any one of  
9 your magistrates, how about that? Well, anyone who is  
10 sophisticated in technology, anybody.

11 All we're asking --

12 **THE COURT:** So you put the burden on me. Why don't you come  
13 up with -- give them three names of people that you think will  
14 -- I'm going to throw out one name right now. John Cooper.  
15 Farella, Braun & Martel. I think he would understand this  
16 technology. He's an outstanding lawyer. He's been a great  
17 service to the Court in other cases you all know about. He  
18 would be doing this for money, though. He would not do this for  
19 free like...

20 So you contact Mr. John Cooper. I haven't talked to him.  
21 I'm just saying someone like that might be a temporary solution  
22 on the trade secrets. But I'm not -- even if we did that, I  
23 would not rule out the possibility that your opponent is going  
24 to be able to see how you are implemented LiDAR.

25 **MR. GONZALEZ:** Understood, Your Honor. And we certainly

1 don't have any problem --

2 **THE COURT:** And I'm not ruling -- the burden is on you. You  
3 got to move fast on this, otherwise I'm going to let them come  
4 see this.

5 On the other hand, if they drag their feet and say: No, we  
6 don't like Mr. Cooper, no -- then maybe they don't get to do any  
7 inspection at all.

8 **MR. PERLSON:** Your Honor, if I could just respond real  
9 quickly to a couple of things you said.

10 First of all, we've already produced, you know, Waymo's --  
11 all sorts of trade secrets, internal information. They have  
12 taken the deposition of one of our key engineers, and asked him  
13 all sorts of questions about the technology.

14 So for them to say that we can't see theirs is just  
15 manifestly unfair, especially considering that we need to make  
16 our case.

17 And then additionally, just in relation to the off-the-cuff  
18 comment about the patents, I think Your Honor probably not  
19 persuaded by their invalidity by his comments about how very  
20 weak they are.

21 And I'll point out that Mr. Levandowski --

22 **THE COURT:** Every -- everyone always does that.

23 **MR. PERLSON:** Yeah. Mr. Levandowski is one of the named  
24 inventors on some of these patents. So apparently --

25 **THE COURT:** At least he won't be able to deny their

1 validity.

2 **MR. PERLSON:** That's what we think, Your Honor.

3 **MR. GONZALEZ:** Your Honor when I say -- we will demonstrate  
4 to you on Friday that our product is different than what is in  
5 those patents. That's all I'm going to say now. It is  
6 different than what is in those patents.

7 **THE COURT:** Do you use one lens or two?

8 **MR. GONZALEZ:** Your Honor, I don't know that I can say that  
9 publicly. But I'll say this. We don't do it the way the patent  
10 does it. And you will know that on Friday.

11 **MR. PERLSON:** Your Honor, that is exactly the reason why we  
12 have to see it. I mean, this is a very typical thing that would  
13 happen -- I mean, for us not to be able to see the very thing  
14 accused --

15 **MR. GONZALEZ:** (Inaudible)

16 **THE COURT:** If they used two, he would have told me. So  
17 they use one. And -- they use one.

18 **MR. GONZALEZ:** Your Honor, actually, you'd be surprised. I  
19 just don't want to say it publicly, because we consider that a  
20 trade secret.

21 **THE COURT:** We'll see.

22 **MR. GONZALEZ:** You've got a lot of media here. Don't think  
23 all these people who were wandering around the hallway decided  
24 to walk in here today.

25 You'll find out on Friday, Your Honor. Our product is

1 different.

2 Anyway, I'll get back to you tomorrow on John Cooper  
3 Your Honor. We'll get back to you tomorrow.

4 **THE COURT:** I want you to know, though, they do have to make  
5 a case.

6 **MR. GONZALEZ:** Understood.

7 **THE COURT:** And they can't get to the end of the case and  
8 say: Oh, Mr. Cooper's going to come testify.

9 He would only be -- he can't be a total substitute for the  
10 plaintiffs having the right to see the accused product.

11 So I'm not sure -- but I do think in terms of the special  
12 master for several purposes in this case, Mr. Cooper would be an  
13 excellent choice. And I urge you both to consider him.

14 All right. The issue of adverse inference is a very real  
15 possibility, but I'm not going rule on that today. That's for  
16 later on. That will probably come up at the actual hearing. On  
17 May 3rd. And if I -- if I decide that -- there are a lot of  
18 circumstances under which I could draw an adverse inference  
19 here.

20 So I think we have a plan to do better on discovery.

21 **MR. GONZALEZ:** We do. Thank Your Honor.

22 And may I just ask for one point of clarification, so we  
23 don't miscommunicate on this. Just on your practice,  
24 Your Honor, if there ever is a another instance where they file  
25 a discovery letter brief, are we allowed to respond to that --

1       **THE COURT:** Immediately.

2       **MR. GONZALEZ:** Fine, thank you. That's all I need to know.

3       **THE COURT:** Immediately, you are. And I'm going to go back  
4 and look and see if my order really says what you say it says.

5       **MR. GONZALEZ:** You might want to modify that order,  
6 Your Honor.

7       **THE COURT:** But you have until 5:00 today to file whatever  
8 you say you were thinking -- wanted to file, but stayed your  
9 hand because of my alleged order.

10       **MR. GONZALEZ:** Thank Your Honor.

11       **THE COURT:** All right. We have a hearing tomorrow.

12       **MR. GONZALEZ:** We'll be back.

13       **THE COURT:** While I got you here, I want to -- are you  
14 filing a brief on -- aren't you filing a brief on this, the one  
15 for tomorrow?

16       **MR. PERLSON:** Yeah. You ordered us to file by 4:00 today.

17       **THE COURT:** All right. I think we're done for today. Thank  
18 you.

19       **MR. PERLSON:** Thank you, Your Honor.

20       **MR. GONZALEZ:** Thank you, Your Honor.

21       (Proceedings concluded)

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4                   CERTIFICATE OF REPORTER

5               I, BELLE BALL, Official Reporter for the United States  
6 Court, Northern District of California, hereby certify that the  
7 foregoing is a correct transcript from the record of proceedings  
8 in the above-entitled matter.

9                               *Belle Ball*

10  
11                               /s/ Belle Ball

12                               Wednesday, April 5, 2017

13                               Belle Ball, CSR 8785, CRR, RDR  
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